



1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:070. Out-of-service UST systems, temporary closure and permanent closure of
6 UST systems, and change-in-service of UST systems.

7 RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.60, 40 CFR Part 280
8 Subpart G, Part 281, 42 U.S.C. 6991-6991c

9 STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137, 40 CFR Part
10 280 Subpart G, Part 281, 42 U.S.C. 6991c

11 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the
12 Environmental and Public Protection Cabinet [~~Natural Resources and Environmental Protection~~
13 ~~Cabinet~~] to develop and conduct programs that provide for the prevention, abatement, and
14 control of contaminants that may threaten the environment. KRS 224.60-105 [(2)] requires the
15 cabinet to regulate underground storage tank (UST) systems by requiring registration
16 [~~notification~~], minimum construction and performance standards, leak detection, recordkeeping,
17 release reporting, corrective action, closure, financial responsibility, and other standards to
18 protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a
19 regulatory program that implements federal requirements for UST systems. This chapter
20 identifies requirements for UST systems. This administrative regulation establishes the

1 requirements for out-of-service UST systems, temporary and permanent closure of UST systems,
2 and change in service of UST systems.

3 Section 1. Applicability. (1)~~[(a)]~~ This administrative regulation shall apply to any owner
4 or operator of a UST system that has a UST system release confirmed after the effective date of
5 this administrative regulation ~~[on or after January 1, 1996]~~, or has submitted a “Notice [Notice]
6 of Intent to Permanently Close Underground Storage Tank System” DEP 7114 (January 2006)
7 ~~[Form (DEP Form 5025) (incorporated by reference in Section 2 of this administrative~~
8 ~~regulation)]~~ that has been received by the cabinet’s regional office after the effective date of this
9 administrative regulation. ~~[Underground Storage Tank Branch of the Division of Waste~~
10 ~~Management on or after January 1, 1996.]~~

11 (2) The owners and operators of a UST system who have, prior to the effective date of
12 this administrative regulation, either submitted a notice of intent to permanently close
13 underground storage tank systems, or reported a confirmed release to the cabinet, shall comply
14 with the closure requirements and corrective action requirements in existence at the time the
15 notice of intent to permanently close underground storage tank systems was received by the
16 cabinet’s regional office or the confirmed release was reported to the cabinet.

17 (3) A UST system owner or operator that chooses to remove a UST system from the
18 ground that was permanently closed in place, or empty and taken out of service, prior to
19 December 22, 1988 shall comply with the requirements that were in place prior to April 18, 1994
20 regardless of the submittal date of the Notice of Intent Form.

21 ~~[(b) The owners and operators of a UST system for which a Notice of Intent to~~
22 ~~Permanently Close Underground Storage Tank System Form (DEP Form 5025) was received (or~~
23 ~~that reported a confirmed release) between April 18, 1994 and January 1, 1996 shall comply with~~

1 the closure requirements (or, for a confirmed release report, the corrective action requirements)
2 in existence at the time the Notice of Intent to Permanently Close Underground Storage Tank
3 System Form (DEP Form 5025) was received by the Underground Storage Tank Branch of the
4 Division of Waste Management (or, for a confirmed release report, the requirements in existence
5 at the time the release was reported), unless a written request, signed by the owner or operator, is
6 received by the cabinet. This request shall indicate that the owners and operators intend to close
7 the site as specified in subsection (2) of this section and Sections 3 through 7 of this
8 administrative regulation.

9 ~~(4) [(e)]~~ The owners and operators of a UST system for which a Notice of Intent to
10 Permanently Close Underground Storage Tank System Form (DEP Form 5025) was received by
11 the Underground Storage Tank Branch of the Division of Waste Management (or that reported a
12 confirmed release) prior to April 18, 1994 shall comply with the closure requirements (or, for a
13 confirmed release report, the corrective action requirements) in existence at the time the Notice
14 of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5025) was
15 received by the Underground Storage Tank Branch of the Division of Waste Management (or,
16 for a confirmed release report, the requirements in existence at the time the release was
17 reported), unless a written request, signed by the owner or operator, is received by the cabinet.
18 This request shall indicate that the owners and operators intend to close the site as specified in
19 subsection (2) of this section and Sections 3 through 7 of this administrative regulation, or as
20 specified in 401 KAR 42:071.]

21 ~~(4) [(d)]~~ If the cabinet determines that a UST system that closed before December 22,
22 1988 poses a current or potential threat to human health, safety, or the environment, the owner or

operator shall assess the excavation zone and close the UST system in accordance with [subsection (2) of this section and Sections 3 through 7 of] this administrative regulation.

(5) [(2)] The documents incorporated by reference in Section 8 [2] of this administrative regulation shall be used in meeting the requirements of this administrative regulation.

[Section 2. Incorporation by Reference. (1) The following documents are hereby incorporated by reference:

(a) "~~Underground Storage Tank System Closure Outline~~" (October 1995);

(b) "~~Notice of Intent to Permanently Close Underground Storage Tank(s) Form~~", DEP Form 5025 (July 1995); and

(c) "~~Closure Assessment Report Form~~", DEP Form 4058 (July 1995);

(d) "~~Kentucky Underground Storage Tank Assessment Well Form~~", DEP Form 5033 (July 1995);

(e) ~~American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks"~~ (December 1987);

(f) ~~American Petroleum Institute Publication 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks"~~ (May 1994); and

(g) ~~American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks"~~ (April 1992).

(2) ~~The documents referenced in subsection (1) of this section are available for inspection and copying, subject to copyright law, at the Underground Storage Tank Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays.]~~

1 Section 2 [~~Section 3~~]. Temporary Closure. (1) If a UST system is temporarily closed, the
2 owners and operators shall continue operation and maintenance of corrosion protection and UST
3 system release detection in accordance with 401 KAR 42:030 and 401 KAR 42:040. If a UST
4 system release is suspected or confirmed, the owners and operators shall comply with 401 KAR
5 42:050 and 401 KAR 42:060. UST system release [~~Release~~] detection is not required as long as
6 the UST system is empty.

7 (2) If a UST system is temporarily closed for more than three (3) months, the owners and
8 operators shall comply with the following requirements:

9 (a) Leave vent lines open and functioning;

10 (b) Cap and secure all other lines, pumps, man ways, and ancillary equipment; and

11 (c) Submit an amended "UST Facility [~~Notification for Underground Storage Tank~~
12 ~~System~~] Registration Form", DEP 7112 (January 2006) [~~(DEP Form 5024)~~] (incorporated by
13 reference in 401 KAR 42:020) to the cabinet [~~Underground Storage Tank Branch of the Division~~
14 ~~of Waste Management~~] indicating that the UST system has changed to temporary closure status.

15 (3)(a) If a UST system is temporarily closed for more than twelve (12) months, and does
16 not meet the performance standards of 401 KAR 42:020, then [~~, the owners and operators~~] the
17 UST system shall be permanently closed [~~close the UST system~~] in accordance with Section 4 of
18 this administrative regulation. [~~if it does not meet either the performance standards in 401 KAR~~
19 ~~42:020 (for new UST systems) or the upgrading requirements in 401 KAR 42:020 (for existing~~
20 ~~UST systems, except that the spill and overfill equipment requirements do not have to be met).~~]

21 (b) The owners and operators shall permanently close the substandard UST system at the
22 end of this twelve (12) month period, unless the cabinet provides an extension of the twelve (12)

1 month temporary closure period. ~~[The owners and operators shall complete a closure assessment,~~
2 ~~in accordance with Section 5 of this administrative regulation, before applying for an extension.]~~

3 Section 3 ~~[Section 4]~~. Permanent Closure and Changes in Service. (1)(a) Owners and
4 operators shall notify the cabinet ~~[Division of Waste Management]~~ of their intent to permanently
5 close or make a change in service for a UST system a minimum of two weeks (fourteen (14)
6 calendar days) ~~[at least thirty (30) days]~~ prior to beginning either the permanent closure or
7 change in service under subsections (2) and (3) of this section. This notice shall be submitted on
8 the "Notice ~~[Notice]~~ of Intent to Permanently Close Underground Storage Tank System" DEP
9 7114 (January 2006). ~~[Form (DEP Form 5025) (incorporated by reference in Section 2 of this~~
10 ~~administrative regulation) or on a cabinet approved form containing the same information.]~~

11 Initial abatement action shall not alleviate the owners and operators from notifying the cabinet of
12 the intent to permanently close a UST system; however, the cabinet may specify a shorter
13 notification time prior to permanent closure.

14 (b) The "Notice ~~[Notice]~~ of Intent to Permanently Close Underground Storage Tank
15 System" DEP 7114 (January 2006) ~~[Form]~~ shall only be valid for twelve (12) months following
16 submittal to the cabinet. ~~[signature by the UST system owner, operator, or authorized~~
17 ~~representative.]~~ The closure assessment required under Section 4 ~~[Section 5]~~ of this
18 administrative regulation shall be performed after submitting notification to the cabinet, but prior
19 to completing the permanent closure or change in service.

20 (2) To permanently close a UST system, the owners and operators shall empty and clean
21 the UST system by removing all tank contents and residual tank materials. All UST systems
22 permanently taken out of service shall be either removed from the ground or filled with an inert
23 solid material.

1 (3) Continued use of a UST system to store a nonregulated substance shall constitute a
2 change in service. Before a change in service, the owners and operators shall empty and clean the
3 UST system by removing the tank contents and residual tank materials. The owners and
4 operators shall also conduct a closure assessment in accordance with Section 4 [5] of this
5 administrative regulation.

6 Section 4. [~~Section 5.~~] Assessing the Site at a Temporary Closure, Permanent Closure or
7 Change in Service. (1)(a) Before completing permanent closure or change in service of a UST
8 system, or at the end of the twelve (12) month temporary closure period identified in Section
9 2(3) [~~Section 3(3)~~] of this administrative regulation, the owners and operators shall measure for
10 the presence of a UST system release where contamination is most likely to be present. In
11 selecting sample types, sample locations, and measurement methods, the owners and operators
12 shall consider the method of closure, the nature of the stored substance, the type of backfill, the
13 depth to groundwater, and other factors appropriate for identifying the presence of a UST system
14 release. In accordance with 401 KAR 42:080, the [~~The~~] requirements of this paragraph shall be
15 satisfied if one (1) of the external UST system release detection methods allowed in 401 KAR
16 42:040 is operating in accordance with the requirements in 401 KAR 42:040 at the time of
17 closure and indicates that no UST system release has occurred during the life of the UST system.

18 (b) The closure assessment required by paragraph (a) of this subsection shall be
19 performed in accordance with the requirements of the [~~Underground Storage Tank System~~]
20 "Closure Outline", (January 2006). [~~(incorporated by reference in Section 2 of this administrative~~
21 ~~regulation).~~] The "Closure Assessment Report", DEP 8055 (January 2006) [~~Form (DEP Form~~
22 ~~4058) (incorporated by reference in Section 2 of this administrative regulation)~~] shall be received

1 by the cabinet [~~Underground Storage Tank Branch of the Division of Waste Management~~] within
2 ninety (90) days after UST system removal, closure in place, or change in service.

3 (2) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor
4 is discovered under subsection (1) of this section, or by any other manner, [~~the owners and~~
5 ~~operators shall begin initial response,~~] initial abatement, site checks [~~check~~], site investigations,
6 [~~initial site characterization, free product removal, investigations for soil and groundwater~~
7 ~~contamination,~~] corrective action, and public participation, shall be performed in accordance
8 with 401 KAR 42:060.

9 (3) The handling, transportation, and disposal of any regulated substance from a UST
10 system and any contaminated soils, backfill materials, groundwater, cleaning liquids, and other
11 similar materials generated during activities performed pursuant to this administrative regulation
12 [~~removed from the UST system or site~~] shall be performed in accordance with applicable
13 requirements of 401 KAR Chapters 30 through 49.

14 Section 5. [~~Section 6.~~] Closure Records. (1) In accordance with 401 KAR 42:030 and this
15 administrative regulation, the owners and operators shall maintain records that demonstrate
16 compliance with closure requirements under Section 4 [~~Section 5~~] of this administrative
17 regulation. The results of the closure assessment required by Section 4 [~~Section 5~~] of this
18 administrative regulation shall be maintained for at least three (3) years after receipt of the
19 closure letter indicating that no further action is required for the permanent closure or change in
20 service.

21 [~~(2) The records required by subsection (1) of this section shall be maintained by either~~
22 ~~the owner or operator who closed the UST system or by the current owner or operator of the~~

1 ~~facility. If the records cannot be maintained at the facility, they shall be mailed to the~~
2 ~~Underground Storage Tank Branch of the Division of Waste Management.]~~

3 Section 6 [Section 7]. Extensions. The owner or operator of a UST system may request
4 extension of the [a] time frame for reports [any report] required by this administrative regulation.
5 The extension request shall be submitted in writing and received by the Underground Storage
6 Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant
7 extensions, if the cabinet determines that an extension would not have a detrimental impact on
8 human health or the environment. [if warranted.]

9 Section 7. No Further Action Letter. (1) When the UST facility has met all requirements
10 in 401 KAR Chapter 42, the cabinet shall issue a no further action letter for the UST facility.

11 (2) Any unpaid registration fees due in accordance with 401 KAR 42:200, shall be paid in
12 full prior to the cabinet issuing a no further action letter to any UST facility.

13 Section 8. Incorporation by Reference. (1) The following documents are hereby
14 incorporated by reference:

15 (a) "Closure Outline" (January 2006);

16 (b) "Notice of Intent to Permanently Close Underground Storage Tank System", DEP
17 7114 (January 2006);

18 (c) "Closure Assessment Report ", DEP 8055 (January 2006);

19 (d) American Petroleum Institute Recommended Practice 1604, "Closure of Underground
20 Petroleum Storage Tanks" (Reaffirmed 2001);

21 (e) American Petroleum Institute Recommended Practice 1631, "Interior Lining and
22 Periodic Inspection of Underground Storage Tanks" (June 2001); and

1 (f) American Petroleum Institute Publication 2015, “Requirements for Safe Entry and
2 Cleaning of Petroleum Storage Tanks” (August 2001).

3 (2) The documents referenced in this section are available for inspection and copying,
4 subject to copyright law, at the Underground Storage Tank Branch, 81 C. Michael Davenport
5 Blvd., Frankfort, Kentucky 40601, 502-564-5981, from 8 a.m. to 4:30 p.m. eastern time, Monday
6 through Friday, excluding state holidays and may also be obtained on the Division of Waste
7 Management’s web page located at www.waste.ky.gov.

401 KAR 42:070 is approved for filing.

4-12-2006

Date

John W. Clay

John W. Clay, Deputy Secretary
Environmental and Public Protection Cabinet

for

LaJuana S. Wilcher, Secretary
Environmental and Public Protection Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10:00 AM (Eastern Time) at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Bruce Scott, P. E., Director
Division of Waste Management
14 Reilly Road
Frankfort, KY 40601
Telephone: (502) 564-6716 Fax (502) 564-4049
Email: Bruce.Scott@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 42:070

Contact person: Bruce Scott, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for out-of-service UST systems, the temporary and permanent closure of UST systems, and change in service of UST systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for out-of-service UST systems, the temporary and permanent closure of UST systems, and change in service of UST systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation continues to establish the requirements for out-of-service UST systems, the temporary and permanent closure of UST systems, and change in service of UST systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for out-of-service, change-in-service, temporary and permanent closure of UST systems as described in KRS 224.60-100, KRS224.60-105 and KRS 224.60-137.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment updates the incorporated materials.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the incorporated materials.

(c) How the amendment conforms to the context of the authorizing statutes: This amendment establishes the requirements for out-of-service, change-in-service, temporary and permanent closure of UST systems.

(d) How the amendment will assist in the effective administration of the statutes: This amendment serves to update the incorporated materials for out-of-service, change-in-service, temporary and permanent closure of UST systems.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment only updates the incorporated materials for UST systems

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

- (a) Initially: There will be no costs associated with implementation of this administrative regulation.
- (b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through two Federal grants and the restricted fund receipts described in KRS 224.60-150.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)

No tiering is applied. To apply tiering to the amendment would unduly regulate some entities with USTs while not regulating others.

FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 42:070

Contact person: Bruce Scott, Director

Phone Number: (502) 564-6716

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No If yes, complete question 2 to 4. If no, you do not need to file this form.

2. State what unit, part, or division of local government this administrative regulation will affect.

This amendment may affect local governments that own or operate underground storage tanks.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation.

This amendment relates to the agents of local government that own or operate underground storage tanks. KRS 224.10-105 authorizes the promulgation of this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No effect.

Expenditures (+/-): No effect.

Other Explanation: The cabinet expects no significant impacts from this administrative regulation.

**DETAILED SUMMARY OF MATERIAL
INCORPORATED BY REFERENCE IN
401 KAR 42:070**

I. This administrative regulation incorporates by reference the "Closure Outline", (January 2006). This document is used to establish the requirements for the closure of underground storage tank systems.

This document consists of 23 pages.

II. This administrative regulation incorporates by reference the "Notice of Intent to Permanently Close Underground Storage Tank System", DEP 7114 (January 2006). This document is submitted by owners or operators of underground storage tanks to notify the cabinet of permanent closure activities.

This document consists of 3 pages.

III. This administrative regulation incorporates by reference the "Closure Assessment Report", DEP 8055 (January 2006). This document is used to report the activities and findings from the closure of an underground storage tank system.

This document consists of 4 pages.

IV. This administrative regulation incorporates by reference the American Petroleum Institute Recommended Practice 1604, "Closure of Underground Petroleum Storage Tanks" (Reaffirmed 2001). This document establishes requirements for the closure of an underground storage tank system.

This document consists of 16 pages.

V. This administrative regulation incorporates by reference the American Petroleum Institute Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks" (June 2001). This document establishes requirements for the interior linings of underground storage tanks.

This document consists of 29 pages.

VI. This administrative regulation incorporates by reference the American Petroleum Institute Publication 2015 "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks" (August 2001). This document establishes requirements for the safe entry and cleaning of an underground storage tank system

This document consists of 57 pages.